

WASHINGTON STATE DEPARTMENT OF ECOLOGY

Rule Development Plan

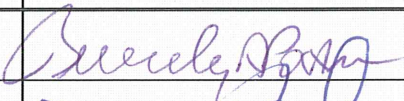
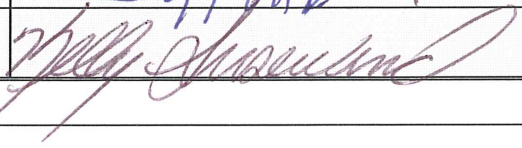
*Amendments to Chapter 173-224 WAC
Wastewater Discharge Permit Fees*

*Water Quality Program
AO# 08-05*

April 2008

Signature Approval

The following signatures are required to approve this Rule Development Plan:

RDP approved by:	Signature:	Date:
Rule Writer		4/23/08
Agency Rules Coordinator		4/24/08
Program Manager		4/23/08

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RULE DEVELOPMENT PLAN

Introduction

RCW 90.48.465 (Water Pollution Control) requires the Department of Ecology (Ecology) to fund its Wastewater Discharge Permit Program through annual permit fees. Ecology is to create, by rule, a fee schedule for collecting expenses to issue and administer wastewater and stormwater discharge permits. Fee-eligible activities include: processing permit applications and modifications, securing laboratory analysis of samples taken during inspections, reviewing plans and documents directly related to pretreatment programs, and supporting the overhead expenses that are directly related to these activities.

Ecology is proposing to amend the Wastewater Discharge Permit Fee Regulation (Chapter 173-224 WAC) that will increase annual permit fees for Fiscal Year (FY) 2009 (July 1, 2008, through June 30, 2009). This fee increase will allow continued operation of the Wastewater and Stormwater Discharge Permit Programs. Ecology is also proposing to add language to the fee rule to automatically allow an increase in fees up to the fiscal growth factor limit for FY 2010, provided the Legislature gives permission for the increase. Ecology will also be cleaning up some language within the fee rule that has caused some confusion for permit holders.

Section A: Authorization

RCW 90.48.465 – Water Pollution Control requires annual fees be paid by all permit holders who have wastewater and/or stormwater discharge permit coverage.

Initiative 960, passed by Washington State Voters in November 2007, requires state agencies to receive authorization from the Washington State Legislature to increase permit fees. The Legislature included language in the 2008 Supplemental Operating Budget (ESHB 2687) authorizing Ecology to increase fees for FY 2009, as necessary, to meet the actual costs of conducting business. The fee increase can be no more than 5.57%.

The Ecology Water Quality Program was given permission to move forward with the proposed amendments to the fee rule by the Ecology Senior Management Team.

RULE AUTHORIZATION DOCUMENT (RAD)

Chapter 173-224 WAC

1. Give a brief description of the rule you want to propose and the purpose.

a. Will this rule making:

☒ Amend an existing rule

☐ Require a new rule

☐ Repeal an existing rule

b. Select which type of rule-making process you anticipate using?

☒ Standard rule making

☐ Expedited rule making

☐ Emergency rule making

2. Provide the statutory authority that allows Ecology to adopt this rule. Is it sufficient to adopt this rule? (Your program's authorizing statute is not always enough to allow rule making. See RCW 34.05.322.)

RVW 90.48.465 (Water Pollution Control) requires Ecology to charge annual fees to holders of wastewater and stormwater discharge permits to fund the wastewater permit fee program. Fees are to be set in rule and can only be amended once every two years.

3. Why are we doing this rule making, are there consequences if we don't? (Is it necessary to comply with a state/federal law, court decisions, petition, etc?)

This rulemaking is necessary if Ecology wants to continue funding the wastewater permit program. If this rulemaking does not occur, fee amounts already established will not recover a portion of Ecology's expenses in operating and managing the permit program. Significant cuts to the program will have to be made.

4. How does this rule making fit into the agency priorities? (Get input from your program manager to answer this question.)

Clean water is critical to all inhabitants of the state. Preventing and cleaning up water pollution is the responsibility of the Water Quality Program (WQP). Wastewater and stormwater permits are tools used by the WQP to ensure that man-made activities that discharge into the various water bodies of the state are discharged at a level where they will not impair the water. Maintaining a sufficient funding level to operate the wastewater permit program is a top priority of the agency. Monies received pay for over 140 staff that perform a myriad of duties to ensure the waters of the state are safe.

5. How would you rank this rule making? (1 = Low controversy, 2 = medium controversy, and 3 = High controversy)

2 - medium controversy. Data from the WQP Time Management System is showing revenues are not matching expenditures. As required by Initiative 960, Ecology requested and received the authority from the State Legislature to increase fees to match the state fiscal

growth factor totaling 5.57% for state fiscal year 2009. Permit fee increases have always been controversial for Ecology.

Ecology is also including language to increase fees for state fiscal year 2010 by the fiscal growth factor projection totaling 5.39% provided it is authorized by the Legislature. However, if the 2010 fee increase is not authorized, fee amounts adopted for fiscal year 2009 will remain.

In addition to the fee increases above, Ecology is proposing to increase the minimum fee for extreme hardship fee reductions by the state fiscal growth factor for Fiscal Year 2009 and Fiscal Year 2010. This will increase the minimum fee from \$100 to \$106 for Fiscal Year 2009 and from \$106 to \$112 for Fiscal Year 2010.

A definition for seafood processing will also be added to aid permit holders in understanding the types of activities are permitted under this permit fee category.

6. Anticipated Timeline. When do you expect to file a CR 101, CR-102, CR-103 (CR-105 if appropriate)? How does this timing relate to other activities in your program (permits, other rule making, etc.)?

CR101 filed 4/23/2008
CR102 filed 6/4/2008
CR103 filed 8/5/2008
Rule Effective 9/6/2008

There are no conflicts with other activities occurring in the WQP.

7. Do you anticipate the need for cross program coordination/communication? Should this be done through the Environmental Program Management Team (EPMT)? What about other federal or state agencies?

Ecology programs that receive permit fee monies will be directly notified of the rule amendment process. Federal and State agencies that are permit holders are directly notified by Ecology of any proposed changes to the permit fee regulation. Because of this direct notification, EPMT does not need to coordinate the communication efforts between the WQP and its permit holders.

8. What interested parties, stakeholders, etc. does this rule making most heavily impact? Why are they interested or concerned?

All holders of wastewater and stormwater permits pay annual permit fees. Permit holders consist of large and small industrial businesses, construction companies, municipal treatment plants, federal and state agencies. All are interested in any proposed fee changes because of the impacts to their budgets.

9. How do you intend to involve stakeholders in the rule-making process? Please be brief, the Rule Development Plan will contain more details.

All permit holders will be directly notified of the rule-making process through direct mailings. Ecology will also hold three workshops and public hearings across the state. The Water Quality Partnership will be kept apprised of the rule development process during regularly scheduled meetings. In addition, the newly formed Permit Fee Restructuring Task Force will also be kept apprised of this rule development process as it unfolds. Members of the task force will also keep their constituents informed of the rule-making.

10. Does this rule implement a new tax and/or a fee increase in revenue from a current tax or fee as defined by I-960?

 X Yes No

If the answer is yes, have you consulted with your Assistant Attorney General about the effect I-960 has on your rule?

 X Yes No

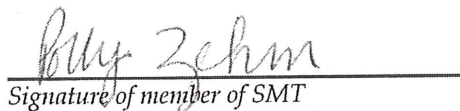

Program Manager Signature

 4/22/08
Date

SMT Decision

- ☒ Authorized to proceed.
☐ Not authorized to proceed.
☐ Return with additional information, see notes below.
☐ Authorization to proceed with conditions, see notes below.

Notes to rule writer:


Signature of member of SMT

 4/22/08
Date

Remember: When SMT makes a decision and signs the RAD, the rule writer must give a copy to the Jerry Thielen, Agency Rules Coordinator.

Section B: Rule Development Timeline

Action	Target Date
Planning Phase	
RAD-SMT Briefing	4/4/2008
RDP-Signed by Agency Rules Coordinator	4/22/2008
SEPA Preliminary Threshold Determination	N/A
CR-101 Filed	4/23/2008
Drafting/Proposal Phase	
Draft Rule to the Rules unit (6 weeks prior to CR-102 filing) The Rules Unit will submit your language to OTS. <i>No changes can be made to the rule language after this point without starting the 6 week clock over again.</i>	5/20/2008
Draft cost/benefit analysis returned to program for editing (2 weeks prior to filing CR-102)	5/7/2008
CR-102 Filed (SBEIS, Draft DEIS/DNS, preliminary CBA if required)	6/4/2008
CR-102 Published	6/18/2008
Public Comment Phase	
First Hearing Date	7/8/2008
Last Hearing Date	7/10/2008
Close of Comment Period	7/15/2008
Adoption Phase	
Final Rule to Rules Unit (4 weeks prior to filing CR-103) The Rules Unit will submit your language to OTS.	7/28/2008
Intended Date of Adoption	8/5/2008
Adoption Date	8/5/2008
CR-103 Filed (Implementation Plan, CES, C/B Analysis, Rulemaking Criteria Documentation, if required)	8/5/2008
Effective Date	9/6/2008
Implementation Phase	
Submit Rule File to the Rule's Unit (2 weeks after Adoption)	9/15/2008

Section C: Issues and Concerns

Since their inception, the Wastewater and Stormwater Permit Fee Programs have experienced complex and challenging issues. Fee programs, in general, are not popular. Based on the authority given to Ecology by the 2008 Washington State Legislature, Ecology is proposing to increase fees up to the state fiscal growth factor projection determined by the Governor's Office of Financial Management. The fiscal growth factor increase for FY 2009 totals 5.57%.

State law only allows the fee rule to be amended once every two years. This rule revision covers FY 2009 and 2010. Because the 2008 Legislature only addressed the fee increase for FY 2009, Ecology is also proposing to add language to the fee rule that would allow for a fee increase to occur automatically for FY 2010 if the Legislature authorizes it. The Attorney General's Office has indicated Ecology can move forward with this proposal provided it is clearly stated in the rule that if the Legislature does not authorize a fee increase for FY2010, the FY2009 fees adopted remain in effect.

Section D: Financial and Legal Support

Revision of the fee rule is part of the existing Water Quality Program staff's regular duties. The estimated time for staff to revise this rule totals 0.5 FTE for 6 months. There will be an additional cost for printing and mailing information and making copies of the proposed amendments available to permit holders and interested parties. Ecology staff will keep costs down by making documents available online for printing. Costs of printing and mailing are estimated not to exceed \$5,000.00. Travel expenses for public workshops and hearings are estimated at \$1,500.00.

Legal Issues:

Alyson Zipp is the assigned Assistant Attorney General reviewing the fee rule changes for compliance with Initiative 960. Ronald Lavigne is the assigned Assistant Attorney General reviewing general fee rule changes.

Section E: Other Requirements

Does the rule impact businesses with less than 50 employees?

☒ Yes ☐ No

This regulation already provides relief from fees for small businesses with no more than one million dollars of gross revenue from the activity covered by the permit. To the extent there may be disproportionate impacts on small business, this provides mitigation, as would be required by the Regulatory Fairness Act (RCW 19.85.030) were a small business impact statement found to be necessary.

Does this rule making need to comply with SEPA (State Environmental Policy Act)?

☐ Yes ☒ No

This rule amendment is exempt from SEPA requirements.

Section F: Communication Strategy

Topic/Issue

Ecology is proposing the following:

- Increase annual permit fees by 5.57% for all wastewater and stormwater permit holders for FY 2009. Ecology also plans to include an increase in fees for FY2010 provided the Legislature authorizes the fee increase. If there is no authorization, the FY2009 fees will remain in effect. Increase the minimum fee for extreme hardship fee reductions up to the fiscal growth factor for both fiscal year 2009 and 2010. This will raise the minimum fee by \$6.00 per year.
- Include a definition for seafood processing that will eliminate confusion by permit holders who are uncertain what activities are covered in this fee category.

Communicating this information to all interested parties is critical to Ecology to ensure an open rule amendment process which allows for public comment.

Communication goals

To keep all interested parties informed of the rule making process and allow for public input regarding proposed changes to the permit fee regulation.

Brief Background

Ecology amends the permit fee regulation every two years. This activity has occurred since its inception in 1988. Permit holders and other interested parties are kept apprised of the fee rule development process through direct mailings from Ecology. The Permit Fee webpage is also updated with the rule process as it unfolds.

I. Audiences

Development and implementation of the wastewater and stormwater permit fee programs has historically been the responsibility of Ecology's Water Quality Program. The Water Quality Program assumed lead status for the agency when the original rule was adopted in 1988 and has continued for the subsequent rule amendments since that time.

Several other Ecology programs share a funding relationship with the fee program. This relationship is largely based on programs receiving an allocation of fee revenue. In other words, since several Ecology programs share responsibility for implementing portions of the state's wastewater/stormwater permit program, they receive a portion of the fee revenue.

While other programs share a funding relationship with the fee system, they have not historically participated directly in the fee system design, fee rule development, or fee system implementation. However, they are kept apprised of proposed changes throughout the rule development process.

Office of Intergovernmental Relations – State law (RCW 90.48.465) requires Ecology to assess the impact of permit fees on small dischargers. This program will make the determination of whether or not the proposed changes require a small business economic impact statement to be developed and filed with the regulation.

Staff Contact: Cathy Carruthers, Rules Unit

Solid Waste and Financial Assistance – Administers wastewater permits for all major industries in Washington State. This program receives revenue from the permit fee account to fund some of the administration of these permits.

Staff Contact: Merley McCall, Supervisor, SWFAP – Ind – P&P

Financial Services – Provides centralized fiscal/accounting services, including timely maintenance of ecology revenue and expenditure records. Ensures Ecology funds are received and disbursed in accordance with federal, state, and Ecology policy, as well as the General Accepted Accounting Principles for governmental entities. Responsibilities include cashiering functions and acting as liaison between the collection agency and Ecology.

Staff Contact: Gary Zeiler, Chief Financial Officer

Information Services – Takes responsibility for maintenance and enhancement (if necessary) of the Billing and Revenue Tracking System.

Staff Contact: Kevin Barbee, Supervisor, Fin/ Admin Systems

Nuclear Waste Program – Takes responsibility for issuance and maintenance of wastewater permits on the Hanford Reservation.

Staff Contact: Jane Hedges, Program Manager

Regional Offices – Regional Office involvement in wastewater discharge permit fees is minimal because implementation and administration of the fee system is carried out by Water Quality Program headquarters staff. Regional Water Quality Program managers will be kept informed through period briefings to the Water Quality Program Management Team.

Staff Contacts: Jim Bellatty, Supervisor, Eastern Regional Office
Denise Mills, Supervisor, Central Regional Office
Kevin Fitzpatrick, Supervisor, Northwest Regional Office
Garin Schrieve, Supervisor, Southwest Regional Office
Richard Grout, Supervisor, Bellingham Field Office

Other State and Federal Agencies – The following state agencies are fee payers and will be directly notified of the proposed changes to the permit fee regulation:

- Department of Fish and Wildlife
- Department of Corrections
- Parks and Recreation Commission
- Department of Transportation
- Department of Social and Health Services
- Department of General Administration
- Department of Agriculture

The following federal agencies are fee-payers and will be directly notified of the proposed changes to the fee regulation:

- United States Department of Energy
- United States Navy

Tribal Entities – The Environmental Protection Agency is the permitting authority for tribal entities. Ecology does not issue permits to tribal entities nor does it collect fees from tribal entities.

Environmental Community – The environmental community listed on the Water Quality’s interested parties mailing list will be advised, through direct mailings, of proposed changes to the permit fee rule and invited to comment and participate. The environmental community is also represented on the Permit Partnership.

General Public – The general public will be given an opportunity to comment and participate via the workshops and hearings. A notice of the workshops will be placed in the Ecology Public Events Calendar which is available to a mailing list, sent to the news media, and posted on the Internet. Ecology will also prepare and mail out a news release announcing the public hearings two weeks prior to them being held.

Water Quality Partnership – This group consists of representatives of environmental organizations, large and small business, government agencies, and interested parties who discuss issues of concern to the Water Quality Program. They will be notified of the rule amendment process during regularly scheduled meetings as well as receiving direct mailings.

II. List of potential products and activities – with timeline

Activity	Audience	Lead Staff	Target Date	Products/Output
Develop communication strategy	Intra-agency Coordination Inter-agency Coordination External audiences	Bev Poston	4/2008	Put in Rule Development Plan
Rule Authorization Document	Ecology Management Team	Kelly Susewind Bev Poston	4/22/08	Post on Fee Web Page
File CR101	Permit fee payers and other interested parties	Bev Poston	4/23/08	Post on Fee Web Page
File CR102	Permit fee payers and other interested parties	Bev Poston	6/4/08	Post on Fee Web Page
Develop FOCUS sheet to interested parties	Permit fee payers and other interested parties	Bev Poston	6/4/08	Direct Mailing Fee Web Page
News release	Statewide media Public	Sandy Howard	7/1/08	Newspapers
Public workshops and hearings	Permit holders and other interested parties	Bev Poston	7/8-10/08	Receive oral testimony on proposed rule changes
Concise Explanatory Statement	Permit holders and other interested parties	Bev Poston	7/30/08	Respond to public comments on proposed rule changes. Mail out to commentors and Post on Fee Web Page
CR103 adoption	Permit fee payers and other interested parties	Jay Manning Kelly Susewind Bev Poston	8/5/08	Post on Fee Web Page
CR103 Adoption Announcement	Permit fee payers and other interested parties	Bev Poston	8/6/08	Direct mailing
News release on rule adoption	Statewide media Public	Sandy Howard	8/7/08	

III. Key messages

- The Legislature has approved an increase in fees the Department of Ecology collects from all waste discharge permit holders for FY 2009. The increase does not include domestic wastewater treatment plants in the state, but it does include those in Seattle and King County.
- Because of the Legislature's approval, Ecology is conducting rulemaking to increase permit fees for FY 2009. It will include a fee increase for FY2010 provided the Legislature authorizes the increase. If it is not authorized, the fee amount set for FY2009 will remain.
- Permit fees Ecology collects from waste discharge permit holders are no longer keeping up with Ecology's costs to administer the permits. Washington's population is growing, but our permit fees are not, which could lead to inadequate environmental protections.
- Ecology is working with a broad-based task force comprised of interests who pay permit fees to identify alternatives to Ecology's existing permit fee schedule.
- Permits are Ecology's primary tool to prevent pollution.

IV. Q & A to prep for difficult questions

Compile a list of anticipated questions with answers to help answer difficult questions.

Why are fees increasing?

Like any business operating in the state, Ecology is not immune from increased costs for building, rent, transportation, utilities, etc. RCW 90.48.465 – Water Pollution Control requires Ecology to fund its Wastewater Discharge Permit Program through annual fees. When costs to the program increase, fees must also be increased.

Why is Ecology not proposing to increase fees for municipal sewage treatment plants?

State law RCW 90.48.465(2) sets a fee cap for municipalities to total no more than \$1.80 per residential equivalent. All municipalities (with the exception of Seattle/King County) already pay this. While Ecology's costs increase to manage these permits, the fees cannot increase unless the Legislature amends the RCW.

Is this proposed fee increase in compliance with Initiative 960?

Yes. During the 2008 session, the Legislature authorized Ecology in the 2008 Supplemental Operating Budget (ESHB 2687) to increase fees for FY 2009, as necessary, to meet the actual costs of conducting business. The increase can be no more than 5.57%.

V. Concerns

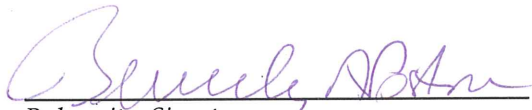
Identify any obstacles or opportunities of the issue or positions of various groups.

Past history has shown that proposing any type of fee increase is very unpopular. Concern will be expressed as to whether or not Ecology is complying with Initiative 960. Currently, the Water Quality Program is meeting monthly with a permit fee program stakeholder work group.

Work conducted by the group is to examine the current fee structure and discuss program funding issues. The group is working with Ecology to examine restructuring the permit fee schedule. However, the product(s) of that work group will be subject to future permit fee rule-making.

VI. Evaluation – ongoing

After the rule is adopted with the CR-103 filing, the process used by the Water Quality Program to communicate information for this rule amendment will be reviewed.


Rule writer Signature

4/23/2008
Date


Public Information Officer Signature

4/24/08
Date